

Before the
Federal Communications Commission
Washington, D.C. 20554

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JAN 23 1995

MM Docket No. 95-4

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Charlotte Amalie, Virgin Islands)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
RM-8501

NOTICE OF PROPOSED RULE MAKING

Adopted: January 6, 1995; Released: January 23, 1995

Comment Date: March 16, 1995

Reply Comment Date: March 31, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Virgin Islands Public Television System ("petitioner"), proposing the allotment of Channel 226A at Charlotte Amalie, Virgin Islands, and its reservation for noncommercial educational use. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, petitioner states that the U.S. Virgin Islands is an English-speaking United States territory located approximately 1,000 miles southeast of Miami, Florida. The three major islands are St. Thomas, St. Croix and St. John, with a total population of 101,809. St. Thomas is located approximately 40 miles east of Puerto Rico, with St. John a few miles east of St. Thomas. St. Croix is located approximately 40 miles south of St. Thomas. Petitioner also states it has applications pending to construct public radio stations at Christiansted, St. Croix (File No. BPED-930114MB) and Charlotte Amalie, St. Thomas (File No. BPED-930114MK), both of which have been opposed by the Puerto Rico Public Broadcasting Corporation ("PRPBC").¹ Petitioner asserts that the proposed radio facilities at St. Croix and St. Thomas in the noncommercial educational band would cause potential Channel 6 television interference. Petitioner further asserts that the potential interference can be avoided by modifying its St. Croix application, but that no modification is feasible for the St. Thomas application because of its proximity to Puerto Rico. Therefore, petitioner urges that since there are no Class A channels available in the noncommercial educational band, that Channel 226A be

allotted at Charlotte Amalie and reserved for noncommercial educational use as the community's first public radio service.

3. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments or potential interference to operation on VHF Television Channel 6. Here, potential interference to Station WIPR-TV, Channel 6, San Juan, Puerto Rico, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use. An engineering analysis has confirmed that there are no Class A channels available in the noncommercial educational band. Therefore, the allotment and reservation of a commercial channel appears to be the only way to provide a full Class A noncommercial educational channel to Charlotte Amalie.

4. We believe the public interest would be served by proposing the allotment of Channel 226A at Charlotte Amalie and to reserve the channel for noncommercial educational use, since it would provide the community with an educational service. An engineering analysis has determined that Channel 226A can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.²

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Charlotte Amalie,	241B1, 246B,	*226A, 241B1,
Virgin Islands	250B,	246B,
	271B, 282B,	250B, 271B,
	287B	*275A, ³ 282B

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **March 16, 1995** and reply comments on or before **March 31, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

¹ PRPBC alleges that operation of the radio stations would interfere with reception of the signal of noncommercial educational station WIPR-TV Channel 6, San Juan, Puerto Rico, in violation of Section 73.525 of the Commission's Rules. In addition, petitioner notes that the application for St. Thomas is mutually exclusive with the application of Clamor Broadcasting Network, Inc., for authority to construct a new noncommercial educational station at Culebra, Puerto Rico (File No. BPED-

930503MD).

² The coordinates for Channel 226A Charlotte Amalie are North Latitude 18-21-26 and West Longitude 65-56-50.

³ We note that a petition was filed by Virgin Islands Youth Development Radio, Inc. requesting the allotment of Channel 275A at Charlotte Amalie and its reservation for noncommercial educational use. A Notice of Proposed Rule Making is issued concurrently to cover this proceeding (RM-8502).

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 (Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial

comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.